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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/401,039 09/21/99 OBRADOVICH M 8002.10103

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EXAMINER

LOUIS JACQUES, J

ART UNIT

PAPER NUMBER

3661

DATE MAILED:

02/10/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/401,039

Applicant(s)

OBRADOVICH ET AL.

Examiner

Jacques H. Louis-Jacques

Art Unit

3661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 1999.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 14) ☒ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 17) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other: _____

Art Unit: 3661

DETAILED ACTION

Drawings

1. The drawings filed along with the application on September 21, 1999 are approved by the draftsman.

Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claims 18-23 and 36-43 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 21-39 and 1-20 of prior U.S. Patent No. 6,009,355. This is a double patenting rejection.

The doctrine of double patenting, as set forth in the MPEP seeks to prevent the unjustified extension of patent exclusivity beyond the term of a patent. Although, generally, a double patenting rejection is not permitted where the claimed subject matter is presented in a divisional application as a result of a restriction requirement made in a parent application under 35 U.S.C. 121, in the present case, the present application claims the same subject matter as in the parent application.

Art Unit: 3661

As stated in the MPEP, where the claims of an application are *substantively* the same as those of a first patent, they are barred under 35 U.S.C. 101 - the statutory basis for a double patenting rejection. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101. The term "same invention," in this context, means an invention drawn to identical subject matter. *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957).

It is found that the claims in present application could be literally infringed without literally infringing corresponding claims in the patent. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). The mere fact that the preambles of the claims of the present application are differently worded, they still define the same invention as the abovementioned patent.

Thus, the double patenting rejection is proper.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent

Art Unit: 3661

5. Claims 13-17, 24-35 and 44-50 are rejected under 35 U.S.C. 102(e) as being anticipated by Beyerlein et al [5,553,661].

Beyerlein et al discloses a solar position correction for climate control system, wherein the setting for each zone is adjustable for the effects of sun intensity and sun position, i.e., the position of the vehicle. According to Beyerlein et al, there is provided Global Position System (GPS) data from which sun position relative to the vehicle (i.e., vehicle position) is determined, and solar sensors provide solar intensity information. There is also provided an empirical table for each zone addressed by sun elevation and relative azimuth contains solar illumination factors which, along with solar intensity factors, afford an adjustment to the comfort settings, thus altering the temperature and/or flow rate of air supplied to each zone. Furthermore, the climate/temperature is controlled based on time and date as furnished by an on-board clock.. See abstract. As set forth in the summary of the invention, the comfort settings are adjusted based on the sun position relative to the vehicle or the position of the vehicle as obtained from the global positioning system. Since the sun position at a given place depends on the time of day and time of year, the position relative to the vehicle can be determined from the geographic location, the day, the date, and the vehicle heading. The geographic position can be obtained from a satellite system known as the Global Position System (GPS) when the vehicle is specially equipped to receive this information. The time and date can also be received from the GPS system, and information giving the heading of the vehicle is also available if the vehicle is moving. Where the vehicle is equipped with a radio

Art Unit: 3661

having a clock function, the time and possibly the date could be obtained from that source. Furthermore, as set forth in column 4, the sun position is a function of the vehicle's geographic location, time of day, and the date or time of year. All this data is available from a satellite-based navigation system known as geographic position system or GPS. A vehicle equipped with a GPS receiver can thus obtain the necessary data for determining sun and vehicle position FIG. 5 of Beyerlein et al shows a GPS satellite system 14, and a climate control system 16 which includes GPS receiver 18 for the position signals. GPS signals received by the receiver specify the longitude and latitude of the vehicle, accurate within a hundred feet, as well as the time and date. See also column 5 and the claim section.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

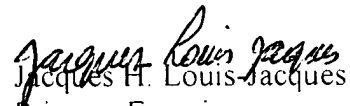
5,653,386	Hennessee et al	Aug. 1997
5,547,125	Hennessee et al	Aug. 1996
5,416,318	Hegyi	May 1995
4,441,405	Takeuchi	Apr. 1984
4,337,821	Saito	Jul. 1982
4,291,749	Ootsuka et al	Sep. 1981

Art Unit: 3661

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacques H. Louis-Jacques whose telephone number is (703) 305-9757. The examiner can normally be reached on M-Th, 8:30 AM-5:00 PM (Eastern Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on (703) 308-3873. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-8623 for regular communications and (703) 308-8623 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1111.


Jacques H. Louis-Jacques
Primary Examiner
Art Unit 3661

/jlj
February 7, 2000